

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0080 MVE

Motor Vehicle Excise Tax

For Tax Period: 12/31/94 Through 10/31/96

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ISSUE

**I. Motor Vehicle Excise Tax - Imposition**

**Authority:** IC 9-13-2-78; IC 9-18-2-1

Taxpayer protests the imposition of the motor vehicle excise tax on his 1990 Acura.

**STATEMENT OF FACTS**

Taxpayer moved to Indiana (from Texas) in August, 1994, to attend law school at the University of Notre Dame. Taxpayer was enrolled throughout the assessment period as a full-time student. Taxpayer remained in Indiana through the summers during the assessment period because he worked with the city of South Bend. Taxpayer registered his vehicle in Indiana in October, 1996, when his Texas registration expired. Additional facts will be presented below, as necessary.

**I. Motor Vehicle Excise Tax - Imposition**

**DISCUSSION**

Pursuant to IC 9-18-2-1, within 60 days of becoming an Indiana resident, a person must register all motor vehicles owned by that person which will be operated in Indiana.

Taxpayer protests the motor vehicle excise tax because he states he falls under the higher education exemption provided by IC 9-13-2-78. Indiana Code Section 9-13-2-78 defines an Indiana resident as one of the following:

(1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

(A) Attending an institution of higher education.

(B) Serving on active duty in the armed forces of the United States.

(2) A person who is living in Indiana if the person has no other legal residence.

(3) A person who is registered to vote in Indiana.

(4) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(5) A person who has more than one-half (½) of the persons gross income derived from sources in Indiana using the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. **However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).**

Emphasis added.

Taxpayer claims he is not a resident as his purpose for being here was to attend an institution of higher education. Taxpayer earned more than one-half of his income in Indiana but again claims that he is exempt pursuant to the higher education provision. Subdivision (5) of IC 9-13-2-78 provides that if a person is found to be a resident due to their earning more than one-half of their income in Indiana, that person will not be considered an Indiana resident if that person proves by a preponderance of the evidence that he is not a resident under subdivisions (1) through (4). Assuming the Department finds the taxpayer is not a resident under subdivisions (1) or (4) of IC 9-13-2-78, taxpayer has failed to prove he is not a resident under subdivisions (2) and (3).

Taxpayer has failed to provide evidence of his legal residence in another state. In fact, taxpayer filed full-year resident individual income tax returns in Indiana for both the 1995 and 1996 tax years. Taxpayer also claimed on both tax returns that he had registered his vehicle in Indiana. Taxpayer also conceded at the administrative hearing that he was registered, and did, in fact, vote in Indiana during the assessment period.

**FINDING**

Taxpayers protest is denied. Taxpayer has failed to prove by a preponderance of the evidence that he was not an Indiana resident as defined by IC 9-13-2-78.